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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE ALPPEAL NO.191 OF 2006

The Commissioner of Central Excise
Thane-1. ..Appellant

Versus

M/s.Colour Chem Limited. ..Respondents

Mr. P.S. Jetly with Mr. K.R.Chaudhari and Mr. H.P. Chaturvedi, for the Appellant.
Mr. Prakash Shah i/b. P.D.S. Legal for Respondents.

CORAM: F.I. REBELLO &
S.R.SATHE,JJ.
DATED: 16TH AUGUST, 2007

P.C.:

. The Revenue had framed three questions of law in para.4 of the Appeal memo. It is also pointed out that the learned Tribunal proceeded solely by relying on the judgment in CCE vs. M/s.Machino Montell (I) Ltd. (2004 (168) ELT 466 (Tri.L.B.). It is pointed out that this judgment is subsequently reversed by the Punjab & Haryana High Court.

2. On the other hand on behalf of the respondents learned Counsel points out that this Court has taken the view that if the amount is paid before issuance of the show cause notice then no penalty can be imposed. For that purpose he places

reliance on Commissioner of Central Excise, Mumbai-1 vs. Gavraw Merticle Ltd., 2005 (190) E.L.T.11. It is also submitted by the learned Counsel for the respondents that what has to be considered are the consequences. If the show cause notice is seen, it is submitted, it is not the contention of the Revenue that there was any fraud and consequently what would be applicable is Section 11AA as if then stood as far as interest is concerned.

3. We have considered the argument. We find that that these contentions have not been considered by the learned tribunal as it proceeded solely based on the judgment in CCE vs. M/s.Machino Montell (supra).

4. In the light of that and without answering the questions of law as framed by the Appellants herein we set aside the impugned order dated 1st September, 2005 and remand the matter back to the Tribunal for reconsideration according to law. We make it clear that we have not decided any issue on merits and leave all questions raised here or otherwise available for consideration by the Tribunal. Appeal disposed of accordingly. No order as to costs.

(S.R.SATHE, J.) **(F.I.REBELLO, J.)**